

**MINUTES
CLAY COUNTY PLANNING COMMISSION
7:00 TUESDAY, FEBRUARY 23, 2021
THIRD FLOOR COURTHOUSE**

Members Present: Steve Mortensen, Bill Davis, Jenny Mongeau, Ezra Baer, Kurt Skjerven, Andrea Koczur, Steve Lindaas, Curt Stubstad, Joel Hildebrandt

Members Absent: Mark Klevgaard, Laura Johnson

Others Present: Matt Jacobson, Erika Franck, Caitlin Hurlock, David Kosturik, Jesse Trebil, Julie Kennedy, Mike Varriano, Dworshak, Zach Bopp, Michael Keith, Adam Altenburg, Becky Tigue, Peyton Mastera, Tracer Bowar, Steve Molstre, Bill Borgen, Jamie Thibodeaux, Steve Vigesaa

ROLL CALL:

Meeting was called to order at 7:00 PM. Roll call was taken by Chair William Davis. Director Matt Jacobson went over the rules and procedures for those participating virtually in this meeting.

APPROVAL OF AGENDA:

On motion by Ezra Baer, seconded by Steve Mortensen, and unanimously carried, the Planning Commission approved the Agenda as presented.

APPROVAL OF MINUTES FROM JANUARY 26, 2021 MEETING:

On motion by Ezra Baer, seconded by Jenny Mongeau, and unanimously carried, the Planning Commission approved the January 26, 2021 Minutes as presented.

CITIZENS TO BE HEARD:

There were no citizens present to speak on any matters not on the agenda.

PUBLIC HEARINGS:

**CONTINUED - TREBIL PROPERTIES LLC – PETITION FOR TEXT AMENDMENT TO
THE CLAY COUNTY DEVELOPMENT CODE**

This public hearing is a continuation of a public hearing tabled on January 26th, 2021. The applicant is petitioning for a text amendment to the Clay County Development Code to add Service Business and Wholesale Business, warehousing and storage units as a conditional use in Chapter 5, Table 5-1 in the Urban Expansion Tier 1 Zoning District.

On motion by Jenny Mongeau, seconded by Ezra Baer, and unanimously carried, the Planning Commission took this hearing off the table.

On motion by Ezra, seconded by Kurt Skjerven, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning & Zoning Director, advised that this was a continuation from the hearing of January 26, 2021 for a Text Amendment to the Clay County Development Code. Director Jacobson stated that the Findings of Facts & Order that were addressed at last months hearing were the incorrect Findings of Fact & Order. Clay County Attorney's office has advised that since there was no action or decisions determined at the January hearing, this hearing can go ahead and the correct Findings will be addressed.

At the January meeting there as a Motion to deny the Text Amendment that failed with a vote of 4 to 5. There was a Motion to table the request which passed unanimously. Under direction of the Clay County Planning department, County Planning staff drafted a set of standards for Service Businesses in the Urban Expansion District Tier 1 that would be amenable with County and City Comprehensive Plans. After that there was a meeting with the Planning staff of the cities of Dilworth and Moorhead. They provided their input and then there was a proposed set of standards drafted that was agreeable to the County and the Cities.

The Applicant would like to drop the addition of Wholesale Business, Warehouse and Storage Units as a Conditional use from their request within this Zoning District. The request will continue with sole focus on allowing just the Service Business as a Conditional use within the Urban Expansion District (UED) Tier 1.

The Service Business definition is a business that offers a service instead of products. This definition is a little more broad than the current definition. The Staff recommendation is to require an interim use rather than a conditional use permit for Urban Expansion Tier 1 Zoning District. Interim Use Permits would be limited to 1 Permit per property. The difference between the Conditional Use Permit and the Interim Use Permit is that an Interim Use Permit does not run with the land and instead expires on a set date or a triggering event.

There are 9 standards being considered for this Text Amendment are similar to the ones currently used for a Home Occupation Interim Use Permit. The standards for this Permit would include:

1. Limited to Existing Structures: Service business must be in existing structures on the property.
2. Employees: The number of allowable employees will be set by the Planning Commission, with considerations for traffic, parking, utilities, and surrounding properties. No business shall have more than 10 full-time equivalents.
3. Signs: One non-illuminated sign only of a maximum size of thirty-two (32) square feet is allowed to advertise the service business on site. Such sign shall meet the setbacks for structures in the Urban Expansion Tier 1 Zoning District or attached to the building.
4. Traffic and Roads: Traffic generated by the use shall be considered by the Planning Commission and traffic generated by the service business shall not exceed that which is reasonable for the area in which it is located and the road adjacent to the service business.
5. Performance Standard: No equipment or processes used in the service business shall create noise, vibration, glare, fumes, odors, or electrical interference detectable off the premises.
6. Buffering: Buffering may be required by the Planning Commission to minimize adverse effects on adjacent properties and roadways.
7. Utilities: The use shall not create usage exceeding the capacity of available on-site sewage treatment and drinking water. The user shall not prematurely stimulate investment in public utilities in a municipality's future growth area.
8. Parking: Additional parking spaces may be required by the Planning Commission for the use of

clients, deliveries, etc.

9. Inspections: Service Business Interim Use Permits shall be reviewed and inspected every five years for compliance with conditions.

These proposed standards have been shared with the Applicant and Applicant is agreeable to the Standards #3 through #9, but does have concerns with Standards #1 and #2 with regard to limiting the business to existing structures and limits for the number of employees allowed. Applicant's desire would be to grow his business at this location.

Director Jacobson has also heard from the neighboring business Mud Pumpers. They are concerned about the impact of the first 2 proposed standards being considered as their future plans would include growing their business and expanding their building/building capacities to allow them to put more of their equipment to inside storage.

Director Jacobson pointed out that allowing expansion or additional structures for service businesses in the UED Tier 1 Zoning District may not be consistent with the current Ordinance as the text amendment must be consistent with the purposes of the Ordinance and the purposes of the Zoning District in which the Applicant seeks classification. This request may also be in conflict with the Comprehensive Plans of the Township and also the Cities of Moorhead and Dilworth.

The Land Use Goals and Policies presented at the January 26, 2021 hearing were revisited as follows:

- Land use Goal #1: Establish a comprehensive growth management strategy for Clay County that promotes orderly and efficient growth of residential, commercial, and industrial development while preserving the County's rural character.
 - Policy #1 Work with cities and Townships within Clay County to identify Planned Urban Growth Areas through this planning process around cities that have the potential to be served with an appropriate range of public services in a cost-effective manner within which efficient and orderly growth can be facilitated over the next 20 years.
 - Policy #2 Maintain dialogue with affected local governments so that timely modifications to urban growth areas is accomplished.
 - Policy #3 Work with Cities and their adjacent Townships to facilitate orderly growth of the Planned Urban Growth Areas through the use of orderly annexation agreements.
 - Policy #4 Through this planning process, work with affected local governments to jointly identify proposed land uses in urban growth areas, and update as boundaries are modified.
 - Policy #5 Discourage development from occurring at unsewered urban densities outside of cities until urban services can be provided in an orderly and efficient manner.
 - Policy #6 Work with Cities to extend urban services to the Planned Urban Growth Areas in a timely fashion when economically feasible.
- Land Use Goal #2: Support the long-term protection of agriculture in the County.
 - Policy #1 Recognize and support the agricultural character of the County in all planning efforts.
- Land Use Goal #4: Plan for the orderly, efficient growth of commercial and industrial development in the County through the application of appropriate zoning districts and regulation.
 - Policy #1: Encourage new commercial and industrial developments that require public sewer and water to locate within the County's cities in accordance with their Comprehensive Plans.

- Policy #2: Encourage commercial and industrial developments, which do not need public sewer and water, to locate within Planned Urban Growth Areas in locations with adequate road service.
- Land Use Goal #5: Plan land uses and implement standards to minimize land use conflicts.
 - Policy #1: Prepare and adopt a land use plan that designates land use areas to ensure desirable land use patterns and minimize conflicts.
 - Policy #2: Require adequate transitions between different land uses through appropriate land use planning and zoning standards.
 - Policy #6: Encourage the location of commercial and industrial development in areas that avoid adverse impacts on residential areas.
 - Policy #7: Locate and design industrial and commercial developments to avoid truck traffic through residential or other potentially adversely affected areas.

This service business would not require a public sewer which would be compatible with the Land Use Goals and policies.

The Urban Expansion District was adopted in 2002 and was further modified in 2018 into Tier 1 and Tier 2. The proposed standards are to allow the adjacent cities to have more protection and input on future plans and growth around their communities. Tier 1 is more restrictive and Tier 2 is less restrictive regarding what growth or activity is allowed. City of Dilworth Comprehensive Plan - Future Land Use map was reviewed and shows that this area is identified as future low density residential development.

Comments have been received from neighbors in favor of and in opposition to this request. Input has been received from Cities of Dilworth and Moorhead and they are satisfied with the proposed standards. The County Board of Commissioners will have the final approval. Applicant is willing to drop his request for Wholesale Business, Warehousing and Storage Business. The Applicant's original request was for these business in addition to the service business.

Joel Hildebrandt asked if the Planning Commission would need to stick with the original request or with the changes would the Planning Commission be able to just address a Permit for the Applicant. Matt Jacobson advised that there would still need to be a Text Amendment. Matt Jacobson also confirmed that there would still need to be an Interim Use Permit requested by the Applicant. Ezra Baer asked if the future development of Tier 1 and Tier 2 projection for 20 years is considered realistic. Matt Jacobson stated that development is usually driven by the developers and conditions/situations have to be aligned for the timing. Director Jacobson feels it would be good for the County and Cities to address these Tier 1 and Tier 2 future growth areas more frequently. This feeling was echoed by Jenny Mongeau and she feels specifically important is to address these areas more frequently. Steve Lindaas felt it was important to put in place a more consistent process for reviewing these future growth areas between the Cities and the County. Matt Jacobson expressed his appreciation for the officials of the cities of Dilworth and Moorhead for their willingness to try to address some of these issues in these Zoning Districts.

Jesse Trebil stated that he would like the opportunity to use the property in the same manner as the previous owners had used it and thanked the Planning Commission for their consideration.

Steve Mortensen questioned the Applicant how many employees they are looking to have. Applicant stated that they currently have 3 full time employees and are looking to hire another. They would like to have future

steady growth. Their Litchfield office currently employs about 60 people and stressed that these are good higher-paying jobs; however, they are not considering they would ever have as many as 60. He projects future growth at a standard rate of 5-10% per year. He stressed that the property is surrounded by trees so they are buffered, the traffic would be minimal and the water usage is limited to 1 onsite toilet for employees' use. They feel that they could potentially end up with 15 to 20. Applicant was then asked about the current building and if they had any plans to expand that building. Applicant stated that they would like the opportunity down the road to expand but it would probably be a ways into the future.

Neighbor Julie Kennedy stated that all of the surrounding properties were residential until these businesses came in. She is concerned about potential impact of traffic on this neighborhood.

Peyton Mastera from the City of Dilworth stated his appreciation of working with Planning Director Matt and the City of Moorhead for trying to resolve this situation. He expressed his concern that the further steps taken away from what the future goals are, the less chance the city will ever be able to achieve those goals. He states that utilities have been put in this area to service these residential homes.

Jenny Mongeau clarified that the hearing currently being addressed is for a Text Amendment but any future requests within this Text Amendment will still require an Interim Use Permit. She stated her appreciation that there are homes being requested to be built and businesses wanting to open or operate during the especially difficult times of this pandemic and feels it is important that Clay County is responsive to those trying to develop and grow during these times.

Matt Jacobson clarified the request that is being presented at this time.

Julie Kennedy asked for clarification if this Text Amendment would affect all Tier 1 of Moorhead and all Tier 1 of Dilworth. She emphasized that there is a business commercial district less than a half mile from this property.

Chair Bill Davis asked Director Matt Jacobson how the standard of the equivalent of 10 full time employees was determined. Director Jacobson states it was mainly based on discussions of a business size that would not take these properties further away from what the Urban Expansion District is and how it is defined. Another factor considered was traffic. Bill Davis also confirmed that the results of this hearing would be a recommendation to the County Board of Commissioners for their approval.

Ezra Baer asked if there were other properties that would be affected by this, would they also be limited in their number of employees. The legal non-conforming businesses that could be affected by this proposed Text Amendment change would essentially be grandfathered in at their current employee count since they were operating prior to any changes within the Ordinance. Legal non-conforming businesses are allowed to continue operating as they have; however whatever the local government unit would consider to be an expansion of that use would limit expansion. Expansion would focus more on buildings and land use and less on employee numbers. Ezra Baer asked if the employee standard should even be considered as part of the Text Amendment if it would not be able to be tracked or regulated. Matt Jacobson states that the employee count could be something included within a Permit.

Steve Lindaas addressed Standard #1 and Standard #2 and feels they give very clear guidelines about how properties can be used. In this particular situation with the Applicant, it would give them time to grow and feels

that if there is a process to review these situations, the Interim Use Permit would give the Applicant time to grow and establish his business and feels that these conditions are very favorable for the Applicant and the entities of Dilworth, Moorhead, and Clay County. He expressed concerns regarding the disappointment felt by the nearby residential residents but feels that the proposed resolution is a good compromise and will give the Applicant time to establish his business and also reduce the concerns of the residential owners surrounding this property. He also stated that there could be a process put in place to allow more employees in the future.

Matt Jacobson stated that this could be a modification to the Standard if reviewed in the future. He stated that Service Businesses typically don't bring in public traffic as almost all of their business is done off site. Bill Davis stated that this parcel appears to have a significant amount of space that would allow for ample parking considerations for employees.

Ezra Baer asked if there were changes requested to a Permit, which entity would address the requested changes. Matt Jacobson stated that any changes would need to be brought to the Planning Commission.

On motion by Steve Lindaas, seconded by Ezra Baer, and unanimously carried, the Planning Commission closed by public hearing.

The Findings of Fact and Order were addressed and discussed by the Planning Commissioners as they pertain to the requested permit. All items can be addressed with conditions applied.

On motion by Steve Lindaas, seconded by Curt Stubstad, and unanimously carried, the Planning Commission recommended approval to the Board of Commissioners for the proposed Text Amendment change to add Service Business as a Permitted Use in Urban Expansion District Tier 1 to include the following Standards as worked out with the cities of Moorhead and Dilworth and Clay County Planning:

- 1. Limited to Existing Structures:** Service business must be in existing structures on the property.
- 2. Employees:** The number of allowable employees will be set by the Planning Commission, with considerations for traffic, parking, utilities, and surrounding properties. No business shall have more than 10 full-time equivalents.
- 3. Signs:** One non-illuminated sign only of a maximum size of thirty-two (32) square feet is allowed to advertise the service business on site. Such sign shall meet the setbacks for structures in the Urban Expansion Tier 1 Zoning District or attached to the building.
- 4. Traffic and Roads:** Traffic generated by the use shall be considered by the Planning Commission and traffic generated by the service business shall not exceed that which is reasonable for the area in which it is located and the road adjacent to the service business.
- 5. Performance Standard:** No equipment or processes used in the service business shall create noise, vibration, glare, fumes, odors, or electrical interference detectable off the premises.
- 6. Buffering:** Buffering may be required by the Planning Commission to minimize adverse effects on adjacent properties and roadways.
- 7. Utilities:** The use shall not create usage exceeding the capacity of available on-site sewage treatment and drinking water. The user shall not prematurely stimulate investment in public utilities in a municipality's future growth area.
- 8. Parking:** Additional parking spaces may be required by the Planning Commission for the

use of clients, deliveries, etc.

9. **Inspections:** Service Business Interim Use Permits shall be reviewed and inspected every five years for compliance with conditions.

WILLIAM BORGEN – REQUEST FOR PLATTED (MAJOR) SUBDIVISION

The applicant is seeking approval to plat a three-lot subdivision on parcel 23.011.2000, Tract B of Registered Land Survey No. 3, part of the NW1/4, Township 140 North, Range 48 West, Section 11, Oakport Township.

On motion by Ezra Baer, seconded by Steve Lindaas, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning and Zoning Director, this request is to subdivide a 130-acre parcel into 3 lots, 2 of which will be residential lots totaling approximately 6 acres each, and then one approximately 118 acre out lot to be continued to be used for agricultural use of farming. The current zoning is Agricultural General; the current use is agricultural; and the surrounding area use is agricultural/residential. The proposed subdivision is called Red Rock Estates. There have been previous splits on this parcel to create residential parcels. This property is unique in that it is a Torrens property; approximately 95% of the property in Clay County are common abstract property. Platting this parcel will make property line ownership easier due to the Torrens classification. The properties to the north and south are also registered Torrens as well.

This farmland would be classified as prime farmland if it were drained. The crop productivity ranges from 68 to 90 out of 100. The proposed sites on the west side of this parcel are on the lower end of the productivity. This area began to be developed with the Sweeney Subdivision in the 1940s and is to the south of this area. There are approximately 7 subdivisions along a 1.5 mile stretch along County Road 9, as well as some individual residences, in addition to The Farm In The Dell. One of the reasons this area is popular for development is its proximity to the city of Moorhead, and it is not in the flood plain as other nearby areas are.

Some Policy Considerations from the Comprehensive Plan would be:

Land Use Goal #2: Support the long-term protection of agriculture in the County.

- Policy #1: Recognize and support the agricultural character of the County in all planning efforts.
- Policy #2: Establish clear and distinct zoning districts outside Planned Urban Growth Areas that provide for long-term agriculture and limit residential density in the agricultural areas of the County.
- Policy #5: Support agricultural operations against nuisance complaints when such operations are being conducted according to generally accepted farming practices through "right-to-farm" provisions, requiring setbacks for/from animal agriculture operations, and limiting non-farm residential development in agricultural areas of the County.
- Policy #6: Utilize soil survey information in planning for the best use of the land in rural areas.

Land Use Goal #3: Plan for the orderly and efficient growth of residential development in the County.

- Policy #3: Outside of the Planned Urban Growth Areas, encourage non-farm residential development to be clustered on small lots in and around unincorporated rural communities and in areas that are considered marginal for agricultural use.

Land Use Goal #5: Plan land uses and implement standards to minimize land use conflicts.

- Policy #1: Prepare and adopt a land use plan that designates land use areas to ensure desirable land use patterns and minimize conflicts.
- Policy #2: Require adequate transitions between different land uses through appropriate land use

planning and zoning standards.

Natural Resources Goal #1: Identify, protect, and preserve the County's high quality natural, scenic, cultural and open space areas.

- Policy #8: Utilize soil suitability information in planning new development.
- Policy #9: Require all new development to comply with applicable storm water management plans and policies.

Other Development Code considerations to review would be 8-3-6 Traffic Control and Access Management. County Road 9 is a collector road so adequate spacing between access points would require 330 feet minimum; all of these lots are approximately 394 feet wide.

Existing topography lacks relief and drainage can be a problem in this area. Current drainage primarily flows west and north. The Existing Conditions-Hydrology map survey was shown for a 2-year, 24 hour rainfall event. A lot of the drainage goes through the middle of the field draining to the parcels to the south and a bit to the southeast corner. A lot of drainage on the north goes to the drainage ditch. This would all be considered to be prime farmland if it were better drained. Director Jacobson questioned if the parcel had drain tiles. County Highway Department has dealt with some drainage issues to the south where there is greater development and they have shared information regarding that which will be addressed later in this hearing.

Improvement Plans/Conditions were reviewed which included:

- No restrictive covenants
- Lots adequate for well and septic
- Third lot will be farmed. Drainage on lot could be modified to reduce downstream runoff
- Land Use Notifications required
- Ditch cleaning notices required

.Applicant has done some work to mitigate drainage and runoff. Land Use Notifications would be applicable to any future development on these properties. Highway Department has also stated that they would want ditch cleanout letters sent out to remove vegetation and debris that would impede drainage flows which also includes ice in culverts.

There are neighborhood concerns, primarily concerning drainage. Highway Department would prefer to see these properties have shared access to County 9 to reduce the number of necessary culverts. Applicant would need to receive a Conditional Use Permit if the final plat is approved since this area does not include marginal soils. Since this request only adds 2 lots to an area that has already been residentially developed, Staff recommendation is to approve this request.

Steve Lindaas asked if there was any idea of the amount of farmland currently being taken out of production to create residential property. Director Jacobson advised that this information could be gathered and shared. He is aware that approximately 2 years ago there was another subdivision created in this same area, Linden Trails. Other information that would impact the requested information would be CRP land and also farmland being operated temporarily for aggregate extraction, but is unsure if that information is available. CRP and aggregate-use farmland are typically not high yield soils.

Applicant Bill Borgen stated he didn't have anything to add to the presentation but was welcomed to any questions. Applicant Borgen states he previously developed the one lot to the north of the proposed lots, as well as the 2 lots to the south of the proposed lots. The 10-acre northwest corner lot was developed by the previous owner.

Steve Vigesaa is a neighbor in the northwest corner parcel, and asked about the drainage as he was concerned how his property is lower than those properties surrounding him. He asked if there would be retention ponds considered or an increased size of the culvert near his property. Matt Jacobson advised he could work with the Watershed District to see if a drainage study could be done for this area to determine what the conditions currently are, how they might change and what mitigation could be considered for the future.

Jenny Mongeau asked about the future Division Project and how that will impact this area. Matt Jacobson feels the water drainage in this area would pertain largely to overland water and feels that the Watershed District would be interested in looking at this.

Bill Borgen stated that Section 11 has no inlet into it and that the only flooding possible in that section is from rain. Both the northeast and southeast corners have been tiled and gravity flow to the ditch on the east. This is a road ditch that has been widened.

On motion by Steve Lindaas, seconded by Ezra Baer, and unanimously carried, the Planning Commission closed the public hearing.

The Findings of Fact and Order were addressed and discussed by the Planning Commissioners as they pertain to the requested permit.

On motion by Ezra Baer, seconded by Jenny Mongeau, and unanimously passed, the Planning Commission recommended approval of the Platted Subdivision request to the Clay County Board of Commissioners to include the following conditions:

- **Planning Commission waives second review after Plat approval from Board of Commissioners.**
- **Correction of the plat information signature changed from Chair Gross to Chair Kevin Campbell.**

Request will need to come back to the Planning Commission to receive a Conditional Use Permit due to soils quality.

RJ ZAVORAL & SONS, INC. - REQUEST FOR INTERIM USE

The applicant is seeking approval of an Interim Use Permit to allow a 39.5-acre gravel mining operation on parcel 12.021.1700, the S1/2 of the NE1/4, Section 21, T142N, R45W, Hagen Township.

On motion by Ezra Baer, seconded by Steve Mortensen, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning and Zoning Director, stated that this Applicant had this same request at this same property in 2019. Applicant is requesting an Interim use Permit for a 39.5 acre mining permit. This property has been mined since 2010. The original Interim Use Permit was issued in 2017 to Alexandria Gravel Products and again in 2019. Alexandra Gravel Products has sold this property and ceased their mining operations there and RJ Zavoral & Sons will be taking over mining on this parcel. The following Policy Considerations are from the Comprehensive Plan:

Land Use Goal #2: Support the long-term protection of agriculture in the County.

- **Policy #1:** Recognize and support the agricultural character of the County in all planning efforts.

Land Use Goal #5: Plan land uses and implement standards to minimize land use conflicts.

- Policy #1: Prepare and adopt a land use plan that designates land use areas to ensure desirable land use patterns and minimize conflicts.
- Policy #2: Require adequate transitions between different land uses through appropriate land use planning and zoning standards.
- Policy #3: Require adequate buffering and landscaping for new mining operations when adjacent to existing residential areas as well as when an existing operation expands or is substantially modified and would negatively impact existing land uses in the surrounding area.
- Policy #4: Require phased end-use reclamation plans as a condition for a gravel-mining permit so that areas are reclaimed as they done being mined.

Natural Resources Goal #1: Identify, protect, and preserve the County's high quality natural, scenic, cultural and open space areas.

- Policy #19: Balance the preservation of native prairie areas with mining of the County's gravel resources.

Zoning: The subject property is zoned Agricultural General (AG) and Resource Protection-Aggregate (RP-Agg). The proposed use of the land for extractive mining is an allowed use in these districts.

This is an 80-acre parcel located in the south half of the Northeast Quarter of Section 21 in Hagen Township. The property is currently used for gravel mining. Just to the south of this area is a rather large block of native prairie and land that is zoned Resource Protection-Biological.

RJ Zavoral & Sons has been operating off this property for several years. They currently have an IUP for this property for a hot mix plant that is set to expire February 25, 2025.

Aerial views of the property from 2010 were viewed and that shows exploration on the property. Another aerial view was shared of the property from 2019 showing the existing gravel mining operation. The Applicant's current mining permit is set to expire on March 22, 2021; they are seeking a permit to continue operations on this 80-acre parcel, which includes excavation, screening, crushing, stockpiling, berming, etc.). Their mining plan was set out as:

- Excavation will occur in phases with estimated volume to be extracted at 30,000 cubic yards per year.
- Phasing map shows approximately final depth at 35 feet, subject to change based on materials found during excavation.
- Crushing, screening, and stockpiling will occur onsite.
- De-watering activities will be implemented on an as-needed basis. All water will remain onsite and will be discharged into the onsite stormwater infiltration basin. An estimated 36 million gallons of water for washing is expected annually. Applicant is working with the Department of Natural Resources (DNR) to obtain a water appropriations permit since onsite washing is in excess of 1 million gallons/year.
- The applicant has obtained the NPDES and the SDS: Nonmetallic Mining and Associated Activities permit from the Minnesota Pollution Control Agency (MPCA).
- The applicant is requesting operating hours of March-December, Monday-Saturday from 6:00 AM to 8:00 PM for five years. The previous IUP allowed operation from April through November.

A phasing plan map for the proposed mining was reviewed.

The SWCD visited the site in 2017 and they determined that the current mining would not impact any wetlands. They did consider the following conditions:

- 100 foot buffer from the intermittent stream that flows through the parcel
- Maintain a 500 foot buffer from residences
- 100 foot setback from all property lines

The previous owner has encroached on some of the setbacks, primarily the property line setback on the south, as well as the east side 500-foot residential setback. The current plan is to go out to the site and do a tour with both the Owner and Applicant to verify setbacks and property lines.

Reclamation is proposed to occur in phases as the aggregates are removed. There will be water impoundments anticipated. There are plans to grade the surround topography to drain into the impoundment so no runoff leaves the site.

Hagen Township is aware of the proceedings and the Township will be hearing the new IUP request at their March meeting. The following conditions apply to the current IUP:

1. Operate within provisions of the Clay County Land Development Ordinance;
2. Operate within provisions of the Hagen Township Ordinance and Conditional Use Permit;
3. Operator shall control dust and provide necessary maintenance on any/all gravel haul roads;
4. Operator shall provide proof of NPDES/SDS, Storm Water Management, and Air Quality Permits, as required to the Planning Office, and shall follow all local/state/federal regulations prior to commencing mining operations;
5. Operator shall contact Clay County Soil & Water Conservation District and have wetland evaluation. Operations must comply with all provisions of the WCA;
6. A maximum of 39.5 acres be approved for mining operations (excavation, screening, crushing, stockpiling, berming, etc.). If additional acres are proposed to be opened in the future, a new or amended IUP would be required.
7. Require Application to post a reclamation bond of \$1750 per acre;
8. Require Applicant to reclaim mined out areas as mining activities progress. Require areas to be seeded with native prairie species;
9. Applicant shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and County Environment Services Division;
10. Mining operations: April 1 through November 30, 6:00 AM to 8:00 PM Monday through Saturday. If the operator needs to operate 24/7 or beyond stated days/hours, they shall first notify the Planning Office with the reason and the length of time requested so the extended hours can be approved and affected property owners notified;
11. Permit shall expire December 31, 2026;
12. Maintain a 500 foot buffer from residences;
13. 100 foot buffer from Ordinary High Water (OHW) of the intermittent stream;
14. Other conditions as the Planning Commission deems necessary.

Director Jacobson placed emphasis on Condition #3 as telephone calls have been received by the Planning Office, the Highway Department and the Sheriff's Department for concerns on dust control and gravel truck traffic speeds. In regard to Condition #10, the Planning Commission may decide that the Applicant can request operation changes through a hearing with the Planning Commission instead of just contacting the Planning Office. An Environmental Assessment Worksheet (EAW) should be added to condition #6 due to the size of the mining operation on the property. The intermittent stream is not a public water so any impact to the stream would fall under the Buffalo Red River Watershed District.

The haul route will be down 200th Street to County 34 and then east or west from there. Highway Department requests that regular maintenance be done to the road and to contact any southern landowners if any blading will be done to protect any dust control that may have already been applied. Dust control is important for protection to the residence as well as the wildlife.

As previously discussed, there is a Resource Protection-Biological area adjacent to this parcel. Several rare

species have been documented in the area including Loggerhead Shrike (state endangered), Sterile Sedge (state threatened) and Assiniboia Skipper (state endangered). Avoidance of hydrological impacts will be important to ensure compliance with the Minnesota Department of Natural Resources (MDNR) Endangered and Threatened Species regulations. The MDNR has recommend that the County require a Natural Heritage Review prior to or as a condition of the Interim Use Permit being approved to receive recommendations to prevent harm to these protected species.

Director Jacobson pointed out the importance of restoration and reclamation and the importance of Condition #7.

Ezra Baer asked about hauling in March due to weight restrictions on the surrounding roads. Jenny Mongeau advised she would be okay with an emergency change of operation days/hours be done through staff review instead of a meeting of the Planning Commission; Chair Bill Davis agreed that this is something that can easily be handled by the Planning Director. Steve Lindaas also agreed with this recommendation.

Steve Lindaas asked for greater clarification of buffer zones and the water table limit. Matt Jacobson advised that this pit has already been mined into the water table and referred the remainder of the concerns about groundwater impacts to be addressed by the DNR staff through the water appropriations permit. The nearest calcareous fens are quite a distance away to the south and to the west and he is unsure of any impacts to the calcareous fens. Steve Lindaas requested clarification on the depth of mining into the water table. Director Jacobson advised he can follow up with the MDNR and also the MPCA regarding water appropriations recommendations and the stormwater discharge permits to get further clarification on these two issues.

Steve Lindaas then asked about the plan which sets out the areas of mining and states concerns about the size of the mining pit and the requirements of needing an EAW. He also questioned consequences of the prior owner exceeding limits put into place for their permit regarding setbacks, even though it would not apply to this particular Applicant. Director Jacobson indicates that there could be an impact regarding any future permits they may request. The Applicant's proposed Phase 4 and Phase 5 would be impacted by these issues. Director Jacobson feels that some of the ground may come out of the current delineation drawn of the pit and an inspection may reveal the setbacks may be okay and removed from the current size of the pit. There was also discussion regarding looking at the previous operator's reclamation bond and explore any potential impact that may have to this situation.

Zach Bopp spoke on behalf of the Applicant. He clarified that as the future phases progress they will be reclaiming the early phases as they proceed. They may possibly also move some of the current stockpile. He expressed their desire to be working at this site for a long time and to properly care for it as they proceed.

Chair Bill Davis asked if Applicant is aware that their stockpiling area is included in the 39.5 acres allowed. Applicant stated he understood that. Bill Davis asked how they planned to reach the 35 feet and applicant stated they would get necessary permits for de-watering and discharging and to use backhoe and payloader. They will have onsite settling ponds and pumping.

Steve Lindaas asked the Applicant how the 35 feet compares to the water table. Applicant states the water table is at about 12-15 feet deep and they were in the water in about 12 feet of that. Director Jacobson pointed out that this would be the blue area on the map that was currently being shown. Applicant states that they will need to obtain 7 permits for this site.

Steve Lindaas questioned the environmental impact of the 10 foot vertical buffer for the life of the mining pit to limit further exposure of the water table as stated in the DNR letter. Applicant states that the DNR is more concerned about the de-watering activity, the washing activity, and the use of the water. Applicant has not

spoken to the DNR regarding that comment but they have discussed the water usage.

Jamie Thibodeaux from the Minnesota Department of Natural Resources (MDNR) addressed the letter that she forwarded. She states that the Felton area has a lot of land, plant, and vegetation resource interests in the area of this application request. She confirmed that the Applicant is working to get the water appropriation permit for the use of water for washing and de-watering. However, they are only able to work within the public water rule which states 10,000 gallons/day, 1 million gallons/year. What they are seeing in the Felton area is that simply exposing the water table through extraction can cause a natural pumping of water through evapotranspiration. Not just calcareous fens are groundwater fed wetlands. The Felton area has a lot of wetlands around these gravel pits and simply by excavating you can expose the water table and create this natural pumping affect which has a dewatering affect, impacting adjacent wetlands. She states that Director Jacobson had recommended getting the SWCD out to review this site regarding the Wetland Conservation Act (WCA). The non-public stream would be a WCA regulation as well for any potential impacts.

She questioned the vertical height of the impoundments would be that would be considered for stormwater management at this site. Applicant stated that it is a variable dependent on the extracted material and doesn't expect it to be 35 feet. Applicant states it will be sloped back into the existing water table and back down. Jamie Thibodeau was trying to imagine the landscaping and alluded to a dam safety regulation pertaining to any situation where more than 6 feet of water is impounded, and surpassing that would trigger a dam safety permit.

She stated that there are rare species and resources in this area and she recommends to work with the Threatened and Endangered Species Coordinator. One species of concern is the is the loggerhead shrike and she has provided a link for assistance with this concern.

On motion by Ezra Baer, seconded by Jenny Mongeau, and unanimously carried, the Planning Commission closed the public hearing.

The Findings of Fact and Order were addressed and discussed by the Planning Commissioners as they pertain to the requested permit. All concerns can be addressed through applied Conditions.

There was discussion regarding the change of months of operation. Ezra Baer felt that the dates can be changed from March through December as they do not necessarily need to be hauling in March but can still be mining during that time. Chair Davis felt that Conditions 12 and 13 were important and needed to be addressed. Steve Lindaas asked about adding that a condition be added to work with the governing water appropriations district (The Wild Rice Watershed District) to be certain they are conforming with WCA, as well as coordinate with the MN DNR Threatened and Endangered Species Coordinator to make sure that the impacts are being minimized or eliminated. Ezra Baer asked about the 5 year limitation instead of going with a 10-year expiration. Matt Jacobson explained that Hagen township has some say regarding this. He also shared that the County is looking at doing more routine pit inspections and a 5-year expiration gives the opportunity for inspection and review of the pit operation. Joel Hildebrandt stated agreement that a 5-year Permit expiration will help facilitate review of pit operations.

On motion by Ezra Baer, seconded by Joel Hildebrandt, and unanimously carried, the Planning Commission approved the Interim Use Permit with the following conditions:

- 1. Operate within provisions of the Clay County Land Development Ordinance;**
- 2. Operate within provisions of the Hagen Township Ordinance and Conditional Use Permit;**

3. Operator shall control dust and provide necessary maintenance on any/all gravel haul roads;
4. Operator shall provide proof of NPDES/SDS, Storm Water Management, and Air Quality Permits, as required to the Planning Office, and shall follow all local/state/federal regulations prior to commencing mining operations;
5. Operator shall contact Clay County Soil & Water Conservation District and have wetland evaluation. Operations must comply with all provisions of the WCA;
6. A maximum of 39.5 acres be approved for mining operations (excavation, screening, crushing, stockpiling, berming, etc.). If additional acres are proposed to be opened in the future, a new or amended IUP would be required.
7. Require Application to post a reclamation bond of \$1750 per acre;
8. Require Applicant to reclaim mined out areas as mining activities progress. Require areas to be seeded with native prairie species;
9. Applicant shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and County Environment Services Division;
10. Mining operations: March 1 through December 30, 6:00 AM to 8:00 PM Monday through Saturday. If the operator needs to operate 24/7 or beyond stated days/hours, they shall first notify the Planning Office with the reason and the length of time requested so the extended hours can be approved and affected property owners notified;
11. Permit shall expire December 31, 2026;
12. Maintain a 500 foot buffer from residences;
13. 100 foot buffer from Ordinary High Water (OHW) of the intermittent stream;
14. Applicant must pursue a Natural Heritage Request for the DNR for identifying and protecting the area resources.

NEXAMP SOLAR LLC – REQUEST TO AMEND A CONDITIONAL USE PERMIT

The applicant is seeking approval to amend a conditional use permit approved on January 28th, 2020 to construct and operate a community solar garden on parcel 27.004.0401, in the East ½ of Section 4, Township 140 North, Range 46 West, Spring Prairie Township.

On motion by Ezra Baer, seconded by Jenny Mongeau, and unanimously carried, the Planning Commission opened the public hearing.

Matt Jacobson, Planning and Zoning Director, states that this Conditional Use Request was heard last January but Applicant did not complete construction of the requested solar garden. The Applicant is now known as Spring Prairie LLC and is a subsidiary of the Applicant Nexamp from last year and is now called Spring Prairie Solar LLC. The request is for a 1 (one) megawatt solar garden. There are currently 5 solar gardens operational along Highway 9, and the 6th within the County. The others are operated by US Solar. There is virtually no change from the last granted request but is just being requested since the construction was never completed and that there was a name change to Spring Prairie Solar LLC. Director Jacobson recommended approval of this request and reviewed the previously issued Conditional Use Permit's conditions:

1. Construction shall meet all County, State and township building permit requirements.
2. Decommissioning bond payable at \$1000 for years 6-25 of the project; and
3. Surety bond at 125% of the cost of establishing native plant cover on the project site;
4. Repair access and culvert to the site to specifications of Clay County Highway Department.

Project specifications and blueprints were briefly reviewed.

Applicant David Kosturik from Nexamp Solar/Spring Prairie Solar LLC stated that this request is the same request as previously granted. The lack of activity was due to technical issues with reporting by Xcel which did not allow them to proceed with their previous request. He indicates that these issues are now resolved and they are ready to proceed with the inter-connection agreement.

Steve Lindaas asked if Applicant expected any more delays due to Xcel and they do not at this time.

On motion by Jenny Mongeau, seconded by Ezra Baer, and unanimously carried, the Planning Commission closed the public hearing.

The Findings of Fact and Order were addressed and discussed by the Planning Commissioners as they pertain to the requested permit. All items of concern can be addressed through Conditions.

On motion by Jenny Mongeau, seconded by Steve Lindaas, and unanimously carried, the Planning Commission approved the request for the Conditional Use Permit with the following conditions:

1. Construction shall meet all County, State and Township building permit requirements.
2. Decommissioning bond payable at \$1000 for years 6-25 of the project.
3. Surety bond at 125% of the cost of establishing native plant cover on the project site.
4. Repair access and culvert to the site to specifications of Clay County Highway Department.

UNFINISHED BUSINESS:

- **Matt Jacobson: 2021 Clay County Comprehensive and Transportation Plan Update:** Matt Jacobson introduced Adam Altenburg from MetroCOG. Mr. Altenburg states that progress continues on the update to the Comprehensive Plan. March 23rd has been identified as the Community Engagement date, with two separate meetings that date: The first is Noon-1:00 PM and the second session will be 5:30 – 6:30 PM. They have seen some responses to the Community Input Survey. Fliers were distributed to Post Offices, Senior Centers, and other key locations throughout the County. The next Study Review Committee will be Friday, March 5th. Matt Jacobson thanked Adam Altenburg and MetroCOG for their work to date on this Comprehensive Plan update process. There is a dedicated webpage for this project and there is a link to that on the Planning & Zoning webpage. Plans are also in place to put the webpage link and Comprehensive Plan on various Social Media platforms.
- Jenny Mongeau advised that the Clay County Board of Commissioners approved the request for the Maria Lake subdivision. She also gave an update regarding the Clay County Health Department activity for Covid-19 vaccinations distributions.

NEW BUSINESS:

None

ADJOURNMENT:

On motion by Ezra Baer, seconded by Steve Lindaas, and unanimously approved, the meeting adjourned at 10:03 PM.

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CHANGE 1 TO 10



Steve Mortensen, Planning Commission Secretary